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Day. Co. Chancery Court

BEFORE THE CHANCERY COURT FOR  
DAVIDSON COUNTY, TENNESSEE IN NASHVILLE

LEAGUE OF WOMEN VOTERS OF TENNESSEE;  
ALLISON CAVOPOL;  
CAROL COPPINGER, on her own behalf and as  
next friend of SAMUEL SHIRLEY;  
REVEREND JERRY CRISP;  
TOM JOHN, M.D.;  
TERRELL McDANIEL, Ph.D.;  
BRIAN PADDOCK;  
RANDALL RICE;  
MERYL RICE; and  
REVEREND JAMES THOMAS,

Plaintiffs,

vs.

JULIE MIX McPEAK, Tennessee Commissioner of  
Commerce and Insurance;  
TENNESSEE DEPARTMENT OF COMMERCE  
AND INSURANCE; and  
ROBERT E. COOPER, JR., Tennessee Attorney General  
And Reporter,

Defendants.

2013 OCT -4 AM 10:39  
DAVIDSON COUNTY CHANCERY CT.  
D.C. & M.

NE  
No. 13-1365-IV

~~PLAINTIFFS' PROPOSED~~ ORDER DENYING TEMPORARY RESTRAINING ORDER

RTP

This cause came before the Court on Plaintiffs' Motion for a Temporary Restraining Order filed September 27, 2013. Defendants filed a Response in Opposition and the matter was heard on September 30, 2013.


Having heard and considered the arguments of the parties and having reviewed the facts as alleged in the Verified Complaint, Plaintiffs' Motion for a Temporary Restraining Order is denied, for the following reasons:

Plaintiffs have not established that they would suffer irreparable harm to a degree sufficient to justify the extraordinary relief of a temporary restraining order. Moreover, the balance between the alleged harms and the injury that granting a temporary restraining order may cause militates against the Court intervening at this stage of the litigation.

Nevertheless, Defendants are directed to interpret the Emergency Rules in strict conformity with federal law. Plaintiffs may continue to engage in the outreach and enrollment activities described in the Verified Complaint, as long as they: (1) are not federally-certified Navigators or federally-certified Certified Application Counselors, and (2) do not hold themselves out to be federally-certified Navigators or federally-certified Certified Application Counselors.

This matter is set for a Temporary Injunction hearing on October 9, 2013. Any supplemental evidentiary material or briefing is due by October 7, 2013.

Entered this \_\_\_\_ day of \_\_\_\_\_, 2013.

  
Chancellor Russell Perkins

Submitted for entry



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IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

LEAGUE OF WOMEN VOTERS OF TENNESSEE;  
ALLISON CAVOPOL;  
CAROL COPPINGER, on her own behalf and as  
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General and Reporter,

Defendants.

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**Excerpt of Proceedings**

**Before the Honorable Russell T. Perkins**

**September 30, 2013**

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ACCURATE COURT REPORTING  
The Pilcher Building  
144 Second Avenue North, Suite 230  
Nashville, TN 37201  
(615) 244-DEPO or 244-3376

2013 OCT 11 AM 10:13  
FILED  
DAVIDSON COUNTY CHANCERY CT.  
D.C. & M.

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Ruling ..... 3

A P P E A R A N C E S

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1           (The above-captioned cause came to be heard before  
2 the Honorable Russell T. Perkins, Davidson County Chancery  
3 Court, September 30, 2013, at 4:00 p.m., Nashville,  
4 Tennessee. The following excerpt of proceedings were had  
5 before the Court, to wit:)

6                           \* \* \* \* \*

7           THE COURT: Shortly after 8:00 this morning I got  
8 the plaintiffs' papers as I was preparing for a trial that  
9 began at 9:00 this morning and I determined that it wouldn't  
10 be fair to either side to make an ex parte ruling given the  
11 interests at stake or the potential interests at stake in  
12 this case, and so that's why I set the hearing for today, to  
13 give the parties an opportunity to argue.

14           Normally this Court does not set hearings in  
15 temporary restraining orders because we later have an  
16 opportunity under the temporary injunction process to have a  
17 hearing. And we will have a temporary injunction hearing  
18 at -- as soon as practicable, as soon as the -- we can pick a  
19 date and have a hearing.

20           But given that this Act comes into effect tomorrow,  
21 I thought it appropriate to have a hearing today.

22           In -- in trying to analyze this issue under  
23 Rule 65, it appears to me that it is not appropriate for this  
24 Court to grant a temporary restraining order and the Court  
25 denies the request. There are serious questions going to the

1 merits in this case. And this Court is concerned, as -- as I  
2 kind of tipped off with my question about unintended  
3 consequences, that the Court, under the notion of trying to  
4 protect rights, might end up doing something that has -- that  
5 serves as an impediment to people trying to get on this  
6 program. And I still have that concern.

7           So let me try to explain the ruling. And, again,  
8 this is just a preliminary ruling. And we'll have a  
9 temporary injunction hearing, we'll probably have summary  
10 judgment motions, we'll -- and we'll -- we'll likely have a  
11 trial at some point in this proceeding.

12           But I'm just going to direct the defendants to  
13 interpret these rules as strictly consistent with the federal  
14 rules. And so to the extent that there may be some language  
15 that -- that strays a little bit that causes these plaintiffs  
16 some concern, I'm going to direct the state officials who  
17 enforce this to interpret their rule exactly in conformity  
18 with the federal rule while we get this sorted out.

19           And so what does that mean? That means that these  
20 plaintiffs can do what they intended to do all along as long  
21 as they don't hold themselves out as certified Navigators or  
22 certified ACAs under the federal scheme and the state scheme.

23           Now, what about conduct that might fall in the  
24 middle, conduct where somebody engages in something that is  
25 designed for a Navigator or an ACA, it is an un -- but

1 it's -- it's conducted on behalf -- on -- on the part of an  
2 uncertified person? Just follow the federal language. Make  
3 sure the state interpretation lines up with the federal  
4 language.

5           One thing you have to -- that the Court has to take  
6 into consideration is, these are Emergency Rules and they're  
7 probably not going to be in the same form as the final rules,  
8 and they are subject to being -- being amended. Because  
9 we've had such an abbreviated time period and not the  
10 opportunity for public comment and remarks, now we end up in  
11 a situation that I don't think either side intended based on  
12 what I read today. And I read every word that everybody  
13 filed today.

14           So if somebody's rights get -- ends up getting  
15 chilled because of this, that's not the intention of this  
16 order at all. But the Court is directing the people to do  
17 what they normally would do under the federal language.

18           And so am I striking down or enjoining the state  
19 language? No. The Court does not -- is not convinced that  
20 there's going to be irreparable harm so that the drastic step  
21 of extraordinary relief -- for this Court just to step in  
22 between the process that the legislature has gone through and  
23 the department has gone through with the rules, it would  
24 just -- it would -- it would be -- it would require an  
25 extraordinary showing at this stage for the Court to do that.

1           Now, after everybody has had a chance to do a  
2 little bit more briefing, file more affidavits, the Court  
3 might be convinced otherwise at the preliminary injunction  
4 stage. But at the temporary injunction stage where -- where  
5 scarcely -- this case has been scarcely pending two business  
6 days, it just would be extraordinary for this Court to  
7 enter -- enter -- to kind of almost set aside all the process  
8 that has gone on before. So I'm not inclined to do that.

9           But at the same time, I am concerned about some of  
10 this language. It could conceivably chill protected conduct,  
11 and I don't want that to happen. But the Court is kind of  
12 limited from where I sit right now. And so what the Court  
13 says is, when in doubt, conform the state language to the  
14 federal language until this can be sorted out in the courts.

15           So I know that's probably clear as mud. But the  
16 Court is denying the temporary restraining order for the  
17 reasons it has stated, primarily because the balancing of  
18 harms, I think it militates against the Court intervening at  
19 this stage. And also the Court is not convinced -- although  
20 there's the potential for a chilling effect, the Court is  
21 really not convinced that there's going to be irreparable  
22 harm if the -- if the Court fails to grant this extraordinary  
23 relief at this stage of the proceeding.

24           So that's the Court's ruling.

25           Now, we need to set a temporary injunction hearing.

1 Yes, sir?

2 MR. COLEMAN: Just to clarify what the ruling is on  
3 what the order is to the state. Given that the state has  
4 represented that these rules only apply to Navigators and  
5 certified application counselors under the federal law, is --  
6 is part of your order to them that the rule can only apply to  
7 Navigators and Certified Application Counselors?

8 THE COURT: I'll hear from the other side before I  
9 respond to that.

10 MR. YOUNG: Well, Your Honor, again, I think the  
11 state's position here is that it applies to those people that  
12 have certified and anyone who is not certified and holds  
13 themselves out as a Navigator or a certified consultant.

14 Again, my analogy to a real estate broker: the law  
15 is going to apply to that broker; it's also going to apply to  
16 anyone who holds themselves out as a broker even though  
17 they're not licensed. So I think that's the extent of where  
18 the state is on this: Those folks who have been qualified  
19 and approved and anyone who says they have been but have not  
20 been.

21 THE COURT: The reason -- the way I was trying to  
22 address that, Counselor - and it's a perfectly legitimate  
23 point to bring up - is that's why I said any interpretation  
24 should conform to the federal statute. Rather than trying to  
25 say that the federal statutes -- or the federal rules and the

1 federal statutes say that this is the -- the extent of the  
2 application, I'm saying, follow the federal interpretation  
3 when in doubt, because we've got an emergency here -- rule  
4 here that's probably going to be amended. I -- I'm not  
5 saying that it is, but it's probably going to be amended.  
6 And if nothing else, there's going to be a permanent rule  
7 that comes up that's not going to be word for word with what  
8 we have here today.

9           So -- so rather than try to -- because somebody  
10 might hold themselves out to be certified. And that's  
11 clearly not the way it's supposed to go.

12           So given that, I think I've gone as far as I could  
13 go on a temporary restraining order. So that's where we are.  
14 Like I said, it might be clear as mud, but the idea is that,  
15 to the extent that these Emergency Rules are going to be  
16 challenged, everybody gets to fight another day. But for  
17 now, when in doubt, the state rule is to be interpreted like  
18 the federal language reads. So so much for that.

19           Let's -- let's schedule the temporary injunction  
20 hearing and let's do a briefing schedule too when the -- when  
21 the papers need to be filed.

22           Yes, sir?

23           MR. YOUNG: Your Honor, next week sometime, just to  
24 point out a time frame to have a hearing, and dates on briefs  
25 before that?

1 THE COURT: All right.

2 MR. YOUNG: Again, it's an important issue. Need  
3 to move it along.

4 THE COURT: Plaintiff, do you have a preference?

5 MR. COLEMAN: As soon as possible, Your Honor.

6 THE COURT: Okay. How about October 9th at 9:00 in  
7 the morning?

8 MR. YOUNG: Fine with us, Your Honor.

9 THE COURT: All right.

10 MR. COLEMAN: Works for me, Your Honor.

11 THE COURT: All right. We'll have the temporary  
12 injunction hearing on October 9th at 9:00. It will be a non  
13 evidentiary hearing so you'll have to file affidavits or  
14 other evidentiary material kind of like in the summary  
15 judgment context, that kind of stuff.

16 When -- what about the schedule for filing any  
17 additional material?

18 MR. YOUNG: Monday, Your Honor?

19 THE COURT: All right.

20 MR. YOUNG: Would that be soon enough?

21 THE COURT: All right.

22 Does that work for you?

23 MR. COLEMAN: That works.

24 THE COURT: Does anybody want a -- a chance to  
25 reply? I guess it'd be kind of late if you -- okay.

1           So Monday is October 7th? Let's make those filings  
2 due at noon. Any briefs, countervailing information, will be  
3 filed October 7 at noon. And of course it kind of goes  
4 without saying that you'll serve it on the other side by  
5 expedited means: email, fax, or hand delivery. And we'll  
6 take it up on October 9th at 9:00. Thank you.

7           THE COURT OFFICER: All rise.

8           THE COURT: I'm going to ask counsel for the state  
9 to prepare an order.

10           (Proceedings adjourned at 5:01 p.m.)  
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1 STATE OF TENNESSEE )  
2 COUNTY OF WILLIAMSON )  
3

4 I, TAMI R. WEBB, Registered Professional Reporter,  
5 Licensed Court Reporter and Notary Public in and for the  
6 State of Tennessee,

7 DO HEREBY CERTIFY the foregoing proceedings were  
8 taken at the time and place set forth in the caption thereof;  
9 the proceedings were stenographically reported by me in  
10 shorthand; and the foregoing proceedings constitute a true  
11 and correct transcript of said proceedings to the best of my  
12 ability.

13 I FURTHER CERTIFY I am not a relative or employee  
14 or attorney or counsel of any of the parties hereto, nor a  
15 relative or employee of such attorney or counsel, nor do I  
16 have any interest in the outcome or events of this action.

17 IN WITNESS WHEREOF, I have hereunto affixed my  
18 official seal and signature this 3rd day of October, 2013, at  
19 Williamson County, Tennessee.

20

21 /s/ Tami R. Webb  
22 Tami R. Webb, RPR, LCR, CCR  
23 LCR #330, Exp. 6/30/14  
24 TN CCR #0460  
25 Notary Public at Large  
State of Tennessee

My Commission Expires: January 27, 2015